

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 199 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

KATHI HARESH BACHUBHAI KHACHAR

Versus

AHIR MERAMBHAI DEVABHAI

Appearance:

MR MK PUROHIT for Petitioner

MR ST MEHTA, ADDL.PUBLIC PROSECUTOR for Respondent No. 3

CORAM : MR.JUSTICE N.J.PANDYA

Date of decision: 01/09/97

ORAL JUDGEMENT

On going through the record, it is quite clear that, before the trial Court, in Criminal Case No.445 of 1993, the charge was framed, at Exh.3; plea was recorded and the matter was posted for recording evidence. Thereafter, the complainant did not remain present and, therefore, a bailable warrant came to be issued and the

trial Court allowed the Vakalatnama to be produced for the complainant and that why the trouble started. The trial Court allowed the complainant to be represented by a Lawyer, and application at Exh.8 came to be submitted for alteration of the charge under Section 216 subsection (1) of the Code of Criminal Procedure.

The said application came to be allowed and in place of charge under Section 326 of IPC, Section 307 came to be altered. This being a Sessions triable case, the ld. Magistrate committed the matter to the Court of Sessions, for trial.

On behalf of the accused, the matter was carried in revision before the ld.Sessions Judge, Bhavnagar, by way of Revision Application No. 104 of 1996.

The ld.Sessions Judge allowed the revision and set aside the order of alteration of charge. It could have been allowed on the small point of the application at Exh.8, having been given by the complainant, in a matter where the prosecution is being pursued by the State. The State has not at all cared to proceed before the ld.Magistrate for offences other than the one under Section 326 along with other related offences as per Exh.3. It is the complainant who is pursuing the matter and it is obvious that, he could not be permitted to do so, much less, he could be permitted to be represented by a Lawyer as is done by the ld.Magistrate as his Vakalatnama came to be filed at Exh.7. No doubt, as observed by the ld.Sessions Judge, if found after recording the evidence of the Doctor, there is scope for alteration of charge, it would be altogether a different thing and that could have been done by the Public Prosecutor before the trial Court. The complainant cannot have any say in the matter, once the prosecution is taken over by the State.

Under the circumstances, the application before this Court is rejected. The order of the trial Court is confirmed, however, subject to the observations made as to the evidence of the Doctor and the consequences arising therefrom, if any. The petition is disposed of. Rule is discharged.

sreeram.